



LAKE MARY CITY COMMISSION

**Lake Mary City Hall
100 N. Country Club Road**

**Regular Meeting
MINUTES
THURSDAY, AUGUST 17, 2023 7:00 PM**

NO VIDEO RECORDING WAS MADE FOR THIS MEETING.

1. Call to Order

The meeting was called to order by Mayor David Mealor at 7:00 PM.

2. Moment of Silence

3. Pledge of Allegiance

4. Roll Call

David Mealor, Mayor
Jordan Smith, Commissioner
Sidney Miller, Deputy Mayor
Justin York, Commissioner
Kevin Smith, City Manager
Michael Biles, Police Chief
Michael Johansmeyer, Fire Chief
Brent Mason, Finance Director
Allison Marcous, Human Resources Director
Bryan Nipe, Parks & Recreation Director
Amber Branton, Acting City Clerk
Kevin Pratt, Deputy Police Chief

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Corey Bowles, Assistant Fire Chief
Miguel Conde, City Engineer
Scott Rankin, Chief Water Plant Operator
Chris Carson, Senior Planner
Tom Rhodes, Network Specialist
Catherine Reischmann, City Attorney

5. Approval of Minutes

A. Approval of Draft City Commission Meeting Minutes for August 3, 2023.

Commissioner Smith made a motion to approve the Draft City Commission Meeting Minutes of August 3, 2023. Deputy Mayor Miller seconded the motion, and the motion carried unanimously.

6. Special Presentations

A. Introduction to New K-9's (Mike Biles, Police Chief)

Mike Biles, Police Chief, came forward to introduce Officers Pomales and Crutcher along with the two new K-9's. The two German Shorthaired Pointers are going to focus on narcotics intervention.

B. Recognition of Lake Mary Little League (Bryan Nipe, Parks & Recreation Director)

Bryan Nipe, Parks & Recreation Director, came forward to introduce Lake Mary Little League's All-Star team. The team won the state championship and went all the way to the regional finals.

7. Citizen Participation - This is an opportunity for anyone to come forward and address the Commission on any matter relating to the City or of concern to our citizens. This also includes: 1) any item discussed at a previous work session; 2) any item not specifically listed on a previous agenda but discussed at a previous Commission meeting or 3) any item on tonight's agenda not labeled as a public hearing. Items requiring a public hearing are generally so noted on the agenda and public input will be taken when the item is considered.

No one came forward, and the citizen participation section was closed.

8. Unfinished Business

A. 2023-LU-04, Ordinance No. 1688, A request for a Small-Scale Future Land Use Map Amendment for a property located at 157 Washington Ave. from

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LMDR (Low-Medium Density Residential) to REC (Recreation). Applicant: City of Lake Mary (Legislative – Public Hearing – Second Reading) (Chris Carson, Project Manager)

Chris Carson, Senior Planner, came forward to discuss the information as presented in the Staff Report, which was included in the agenda packet for review. He stated that at the last meeting Commissioner Smith had asked questions regarding the parks level of service. The comprehensive plan shows an excess of about twenty-five acres. A comprehensive plan amendment will be added to the list of cleanup efforts as the land will need to be reallocated.

The item was then opened for public hearing. Nobody came forward and the public hearing section was closed.

Commissioner York made a motion to approve Ordinance No. 1688, A request for a Small-Scale Future Land Use Map Amendment for a property located at 157 Washington Ave. from LMDR (Low-Medium Density Residential) to REC (Recreation). Deputy Mayor Miller seconded the motion and the motion carried 4 - 0 by roll-call vote. Commissioner Smith, Yes; Commissioner York, Yes; Deputy Mayor Miller, Yes; Mayor Mealor, Yes.

9. New Business

A. 2023-MISC-01, A request to consider the Seventh Amendment to the Third Amended and Restated Development Order (DO) for Colonial Center Heathrow (Lake Mary). Applicant: Ms. Kristen Rosato, Flagship Companies Group, LLC (Quasi-Judicial - Public Hearing) (Sabreena Colbert, Project Manager)

B. 2023-RZ-03, A request to consider the Fifth Amendment to the Fourth Amended and Restated Developer's Agreement for the Colonial Center Heathrow Planned United Development, to allow a 108,000 sq. ft. self-storage/industrial facility within a mixed-use development on a portion of Tract P located on the east side of Business Center Dr. and south of Business Park Ln. Applicant: Ms. Kristen Rosato, Flagship Companies Group, LLC (Quasi-Judicial – Public Hearing) (Sabreena Colbert, Project Manager)

Items A-B were related and discussed simultaneously. They will be voted on separately.

Mayor Mealor addressed a letter sent to Commission submitted by Mr. Kantor, the attorney for the applicant. The letter stated that Mr. Kantor was concerned about his client receiving a fair hearing by the City of Lake Mary. Mayor Mealor stated that in his years of serving the City of Lake Mary he had never received anything of that nature.

Catherine Reischmann, City Attorney asked Mr. Kantor if he would like to waive the witnesses being sworn. He agreed. She then asked the Commission to disclose any ex

parte communication and to base their determination on the testimony and evidence presented tonight.

Commissioner Smith stated that on January 23, 2023, he had informed the City Manager that Mr. John Omana had requested a meeting with him regarding the project. He met with Mr. John Omana on July 18, 2023, and saw an overview of the project. Commissioner Smith had requested examples of other projects Flagship had worked on in the area. At his request he had also met with the City Attorney and Community Development Director yesterday.

Deputy Mayor Miller stated that he had received Mr. Kantor's letter and had advised the City Manager of same.

Commissioner York stated that he had received a message requesting a meeting from Mr. John Omana on LinkedIn both on January 13, and May 12, 2023. He did not respond to either message.

Mayor Mealor stated that on the week of December 2, 2022, he had received communication from Mr. Kantor wanting to discuss this project. During the week of December 5, 2023, he did speak with Mr. Kantor regarding the project. On December 12, 2022, Mr. Kantor sent him a kind email, thanking him for the time, input, and information. He also informed Mayor Mealor that his client did want to continue moving forward with the project. Because of the nature of the item there was no more communication between the two.

Sabreena Colbert, Community Development Director, came forward to discuss the information as presented in the Staff Report, which was included in the agenda packet for review. She stated that the previous amendments to the DRI involved changes to the capacity of uses already established and were deemed non-substantial. Neither the original PUD and DRI nor any of the amendments permit a self-storage facility over the long history of this development although there are more than 100 other uses that are currently approved in the PUD. The applicant is proposing to introduce the new self-storage use to both the DRI and PUD as well as retail/commercial use on the subject property. This is the first request by the owners of the overall development for a new use not contemplated under the application for development approval for the DRI. Only the proposed office use is permitted under the current CCH PUD on the subject property.

The HIP-TI land use designation per policy 1.4 of the comprehensive plan is designed to provide a planning and management framework for promoting the DRI Development Order and PUD zoning classification. The HIP-TI designation lists a wide range of permitted uses including offices, technology research and development, health related uses, sports complexes, manufacturing/wholesale/distribution consistent with the High-Tech/Industrial

Corridor Protection Area Overlay, retail, lodging, residential, or mixed-use developments involving two or more of the uses listed. Storage, including material storage, mini-warehouses and personal storage facilities, is not listed as a use permitted within the HIP-TI designation; it is not a high-tech type of business but is considered heavy industrial under the city code. The HIP-TI land use designation also specifies uses that can be converted or exchanged following the conversion factor based on the most restrictive trip generation. Because the self-storage/industrial use proposed is not one of the approved uses under the table, policy 1.4 does not permit a conversion to self-storage. There was discussion at the P&Z meeting pertaining to the applicability of the High-tech/Industrial Corridor Protection Area overlay. Upon review of the ordinance establishing the High-tech/Industrial overlay, Staff has determined that this property does not fall within the overlay and so any discussion applying the overlay standards to the subject property has been omitted.

The HIP-TI future land use designation identifies specific uses to be consistent with the high-tech/industrial corridor protection area and therefore the growth of these high-tech and industrial uses, known as “light industrial,” are encouraged. These high-tech type of uses, colleges and universities and manufacturing/wholesale/distribution, are included in the district description for the M-1A district. Self-storage does not fit into this mix of uses; it is not a manufacturing/wholesale/distribution use consistent with the industrial/high tech overlay as described in the comprehensive plan. A self-storage facility does not employ any high-tech workers. FLU policy 1.1 states that the land development regulations and codes shall be enforced equally on all property within the city. The proposed self-storage/industrial facility, per the strict application of the land development code, is only permitted as of right on lands with an industrial land use designation on properties with M-2A zoning. FLU policy 1.6, table GOP-1 regulates development within the City by identifying the compatible zoning districts for specific future land use designations. PUD is the only compatible zoning district within the HIP-TI land use category. The description for the M-2A district is not consistent with the wide range of permitted uses in the DRI and the PUD and is not consistent with the property’s HIP-TI comprehensive plan designation.

The requested amendment to the DRI is a rezoning request. Pursuant to section 154.17(A), development within the city shall conform to all elements of the comprehensive plan in addition to the regulations of Chapter 154, zoning code. More specifically, section 154.27(A)(2) states that rezoning proposals shall be studied to determine that the criteria for rezoning are being met. Section 154.61(2) of the City’s Code applies to the requested PUD amendment. A PUD shall comply with the maximum impervious ratio or other measure of intensity allowed for the future land use designation of the subject property, in accordance with the comprehensive plan. The applicant’s revised plan increased the proposed open space from 21.5% to 25%. The draft developer’s agreement proposes a maximum of 80% impervious area and 20% open space minimum. Neither meet the 35% open space requirement for the HIP-TI designation

and it is unclear if the minimum 35% open space of the net land area for the CCH PUD is being met per the current PUD agreement. Per Section 154.61(6), Development standards shall only be waived if the P&Z and City Commission find that the unique characteristics of the development proposed make unnecessary the application of one or more of the provisions to carry out the intent and purposes of the PUD. Staff has determined that there are no unique characteristics that prevent the development from complying with the standards for a PUD district including the uses and standards established in the current CCH PUD agreement. Industrial uses are permitted in the City in the M-2A zoning district. The M-2A district has standards in place for the permitted uses to be appropriately located at a distance from non-industrial uses. Safeguards for siting uses based on compatibility are incorporated in the land development code to provide appropriate buffers/setbacks. Specifically, Section 154.66(C)(4)(c) requires a minimum 1000 ft. separation between an M-2A zoning district and any property which is zoned or designated as residential. For this reason, the subject property would not be eligible for straight M-2A zoning since the south property line abuts a residential zoned (entitled) property within the CCH PUD (MAA Lake Mary multi-family residential). This also makes this property a poor candidate for self-storage as a part of the PUD. Not only is the proposed self-storage facility not compatible as described, but it is also not similar or in character with the adjacent office and residential developments or the overall CCH PUD.

The applicant submitted a preliminary PUD development plan with their request to amend the PUD. Since the self-storage/industrial use is not permitted in the current PUD, the applicant is proposing development standards specific to self-storage in the draft agreement and on the plan. A revised plan was submitted to staff on August 3rd, after the P&Z meeting. A traffic statement was provided, and the proposed development is projected to generate 6,828 net daily trips with 161 PM peak hour trips. The CCH DRI and HIP-TI land use designation includes a conversion matrix where an exchange of the approved uses is permitted based upon the conversion factors established for office, multi-family, commercial and hotel uses only. The applicant is proposing an increase in office and commercial use as well as the addition of industrial. Conversion for the self-storage/industrial use proposed is not permitted under the HIPTI designation and the applicant is not seeking a comprehensive plan amendment. The applicant is proposing 179 total parking spaces for the project. An environmental report was not submitted by the applicant with the request to amend the PUD. If approved, a full environmental study will be required at time of site plan review. The CCH PUD requires a minimum of 35% of the net land area for open space. The HIP-TI designation allows a maximum impervious coverage of 65% and minimum open space of 35%. The revised plan increased the open space for the project to 25%. If approved, a condition can be included for the project to provide 35% open space. CCH has a master stormwater system owned and managed by the HIBC. The project proposed to connect to the existing system. No details or stormwater calculations have been provided due to the preliminary nature of the plans submitted, therefore a full assessment to determine if the proposed development meets all relevant LOS standards related to stormwater has not been completed. All

requirements set forth in the current CCH PUD developer's agreement for landscaping and buffers must be met. The only amendment the applicant is proposing is related to tree mitigation. Staff finds the proposed change for tree mitigation to be applied according to the city's land development code to be acceptable.

The applicant has provided an analysis for the project in the written justification document included in your packet. Staff's responses are included in the reports. Ultimately, Staff finds that self-storage is not consistent with the character of the area designated HIP-TI. The applicant is not seeking a text amendment to the comp plan and is not seeking to amend the text of the DRI and PUD establishing the nature of the development proposed.

Mrs. Colbert stated that staff has reviewed the application and has found that the request for the Seventh Amendment to the Third Amended and Restated DO for Colonial Center Heathrow DRI is not consistent with the goals, objectives and policies of the City's Comprehensive Plan or Land Development Code and recommends denial based on reasons discussed and included in the staff report. For self-storage to be consistent with the comprehensive plan, a comprehensive plan amendment to an Industrial designation is recommended. The Florida Statutes dictate that land development approvals must be consistent with the comprehensive plan. Given this mandate, and the requirement in Fla. Stat. 380.06(7)(a) that the amendment be reviewed based on the standards in the comprehensive plan and the land development code, and Fla. Stat. 163.3194 regarding legal status of comprehensive plan; all changes to the DRI must comply with the comprehensive plan by law.

For all of the reasons addressed and discussed in the prior agenda item, Staff has reviewed the proposed Amendment to the Fourth Amended and Restated Developer's Agreement for the Colonial Center Heathrow PUD and finds that it is not consistent with the goals, objectives and policies of the City's Comprehensive Plan or Land Development Code and recommends denial.

A letter sent to the commission from the Developer's attorney stated that staff made several errors in the P&Z staff report and presentation. Staff's response to the major concerns presented are included in the current reports which were revised to be as accurate as possible reflecting the current applicable DRI DO and Application for Development Approval.

Commissioner York asked to confirm the total square footage.

Mrs. Colbert stated that the applicant may need to answer the question but that the revised application shows the self-storage at 108,000 square feet, the retail/commercial use at 16,335 square feet, and the office use at 16,335 square feet.

Commissioner York stated that with those numbers, about 75% of the use will be self-storage. To him it seems like rather than it being a mixed-use project and self-storage

being incidental it is a storage project with three other incidental uses. Self-storage isn't the secondary component of this.

Mrs. Colbert stated that he is correct, it would not be an ancillary use.

Commissioner Smith asked Mrs. Colbert if that is the way mixed use and secondary use is commonly used based on her previous experience.

Mrs. Colbert stated that the mixed use would be the mix of two or more uses as described in the HIP-TI land use designation of the comprehensive plan. Where there are uses listed and you could have a mixed-use development that included two or more of those. Self-storage is not one of those uses listed.

Commissioner Smith stated that in her report it was listed that the parcel is adjacent to the MMA Lake Mary, formerly the Colonial Grand apartments. Both this parcel and those apartments basically have the same zoning and land use designation. He's concerned because it says in the report that the residential district is buffered from the M-2A zoning category which typically includes self-storage as a matter of right by less intense zoning districts such as M-1A, C1, or PO. His concerns are that the underlying policy rationale is there for the buffering. There isn't adequate buffering and would put a residential area adjacent to the self-storage. It seems to him that the project proximity to the residents was taken into consideration by staff.

Mrs. Colbert stated that he was correct. When this property was annexed where the existing apartments are was also part of tract P so they're only looking at a portion of that. The entitlements on the existing apartments as well as this vacant property include the multifamily. This property is entitled for office and multifamily.

Commissioner Smith asked what a concern would be having a self-storage facility adjacent to a residential property based on her experience.

Mrs. Colbert stated that within the code typically you have standards in place to transition from residential to the more intense uses. Our zoning code applies a modified cumulative approach where each zoning district builds on the other. The M-2A zoning district allows all of those uses permitted in the M-1A district, along with some other uses that are permitted because the M-2A has built in restrictions as far as setback and the buffer from certain zoning districts as well as that thousand-foot separation from residential.

Commissioner York asked if there is a concern for someone having a self-storage facility next to a residential property. With personal property being moved off of trucks, trucks coming through, dropping off property. He wouldn't want to buy a home next to a self-storage facility.

Mrs. Colbert stated at that point you're looking at character, scale and mass. The intensity of industrial uses tends to have more truck traffic. With a self-storage you're looking at box trucks, trucks with trailers, and vans.

Commissioner York asked Mrs. Colbert to elaborate on a term very light industrial that was used in the earlier report.

Mrs. Colbert stated the application for development approval that is referenced in the third amended and restated DRI DO, it includes table 12-2, which is in their packet, there is a primary use established on all of the tracts within the DRI and then there is a secondary use to provide flexibility throughout the construction and development of the overall project. That is what that table shows, it is uses that are identified as very light industrial. It is an ADA phrase. It does describe the intent. It's for the added flexibility. So, they worked in, when they developed the DRI initially back in the late 1980s knowing that it would take years to develop and build out just given the nature and complexity of the project. The flexibility is built in to allow for the market changes over time to incorporate other uses as outlined. Part of that has to do with the level of service standards that were incorporated at the time. Primary uses are built into that and then the certain tracts allow for the secondary uses which include the very light industrial. That is all incorporated into the level of service. The required roadway improvements, the pedestrian circulation, the stormwater, within the ADA and the DRI. Uses outside of that would then need to be assessed to see what those impacts are on the overall development, whether it meets what was initially designed and approved and constructed. Or if additional improvements are required.

Commissioner Smith asked what would an example of very light industrial that was contemplated by the ADA be and would self-storage facilities be included in that.

Mrs. Colbert stated that it would be uses within our M-1A district. They would have to look back to the HIP-TI land use designation. The DRI, HIP-TI land use designation, as well as the CCH PUD agreement all work in concert together. Our HIP-TI land use designation says that all development must comply with the third amended and restated DRI DO, which conditions back to the ADA from 1987.

Commissioner York asked, even though they are using the term very light industrial we're supplying definition in our code.

Mrs. Colbert stated he is correct.

Commissioner Smith asked if self-storage is permitted anywhere else in the city as a special extension.

Mrs. Colbert stated self-storage is only permitted within the M-2A zoning district within an industrial land use designation.

Mayor Mealor stated he shared this with Mr. Kantor back in December. He signed both the fifth and the sixth amendment. The premise of the staff presentation would be no substantial deviation from the overall intent. His concern is that the request before them substantially deviates from what has been planned in this tract. It goes back to probably 1988 and forward. With the fifth and sixth amendments we anticipated that coming out of the category five economic meltdown of 2008 and we wanted to be poised to take advantage of that. We had something truly unique. That is the property that is under discussion. The entire PUD. HIP-TI with a premise that once Verizon was approved and sited, it would serve as the catalyst and the spinoff of the very type of development that we wanted to come to Northwest Seminole County and specifically Lake Mary. It absolutely did that. His concern right now is that he just doesn't feel that with the way everything has been presented over the years, this is a significant deviation. It is an outlier that he just doesn't feel is compatible with that area. Planning and Zoning is strictly advisory, the public policy decisions rests with Commission. He takes that responsibility very seriously.

John Omana, Zoning Tech LLC, 255 Primera Blvd Suite 160, came forward. He stated that we have a conundrum here. Obviously, the City is at risk, his client is at risk, the regulatory framework and the process that is governing this project has been a complete mess. In his thirty-five years of planning experience, he's never seen anything like it. Much less in the eighteen years he spent as the City's Community Development Director. What they hope to do this evening is present information and technical matters that may help address the conundrum.

Kristen Rosato, Flagship Company, 209 Thistlewood Cir, Longwood, came forward to tell them more about the project. She clarified square footage of the outdoor seating and open-air retail style of the proposed building. She stated that eight years ago they moved to their current office which is across from the parcel discussed tonight. In those eight years their staff has grown and so have their needs. They wanted to stay in the area and rather than lease property decided to build. There is already a large amount of empty office space in the area, and it didn't make sense to build more offices. They decided to include a retail space along with their office space, and since self-storage is one of the things they develop, decided to include that as well. They met with some resistance early in the process due to the use, but decided to show the renderings of what they can do. It isn't the garage door, eighties type of self-storage that a lot of people have in their mind. There is a new class A, quality product with climate control storage that has an appearance of office and fits in as a use that is day to day. She stated that self-storage is in a commercial category that is built within the City. They are pushed off into a corner. They are here to challenge that, to look at their renderings, to hear from their team about their interpretation of how it is similar and compatible. They ask that the Commission has an open mind to that being a part of their mixed-use project.

Javiar Omana, CPH, 1117 E Robinson Orlando, came forward. He stated he has been with the firm for twenty-three years in which he is proud to say that his firm has had a

major impact on how Lake Mary has turned out to be. What was envisioned in 1990 by Jen Paulucci has been more than successful. As we all know, in the development process demand changes, lifestyle changes. The DRI and PUD itself gives us a tremendous amount of flexibility to adjust to market forces. This is something that was considered in the original vision from the DRI itself. We progress and introduce new ideas as we move along. The key to a successful local economy is to be able to anticipate and help implement those new ideas. It will eventually lead to increased taxes, compatibility, connectivity, and things that we address as land planners. What our client is proposing meets those requirements and further implements the original vision put forth by Mr. Paulucci. What we have here is an architectural rendering of our mixed-use project. The City doesn't have any requirements as to what minimum square footage or percentages need to be. He proceeded to show slides of the layout of parking and views of different sides of the proposed development. He stated that the requested actions is a notice of a proposed change to the DRI, and increase in retail and commercial square footage, introducing a self-storage facility as a permitted use by reducing the available office entitlement, introducing a mixed use concept the breakdown of square footages is listed, and the pivotal action as we consider the request for the self-storage and it comes with substantial restrictions that deal with urban design, usage and building height. There will be no outside storage, three stories in height max. Their crew has made a tremendous effort to create an architectural theming and contextually Kristen and her crew as well as the architects have made a tremendous effort to create an architectural aesthetic that complements and further implements Jen Paulucci's vision thirty-three years ago.

Hal Kantor, 215 N Eola Ave, Orlando, came forward as the attorney for Flagship. He stated that it's a simple matter, concept of procedural due process. A protected legal principle that shows fairness and protection of legal rights. It includes notice, the opportunity to be heard and the right to present evidence before a neutral tribunal, as well as the application of the proper legal principle. That is what he is concerned about. The history of staff actions in this process have created a violation of the process from the very beginning. By setting forth false statements as to the law and the issues at hand right through the current staff report and things that have been said tonight. That results in poisoning the entire process. He stated that the staff representation and assertions as to the status of law in this City are not based on facts. The staff reports and representations to the Planning and Zoning Commission and City Commission are plagued with errors, omissions, mistakes, and should not be considered. At the beginning of this project during the first step process, the staff told us that we had to meet certain design standards and this project couldn't meet them. He had reviewed the codes and everything he could find related to the project. The document that they referenced was rescinded more than twenty years ago. Then they were told they couldn't have the first hearing unless all properties in Colonial Center Heathrow gave consent. That was made up and did not exist. Then they were told we couldn't have a hearing unless all of the owners in the DRI consented. He reviewed the DRI, and it wasn't in there either. They were then told they had to get the approval of the Heathrow property owners, he talked to them, and they were mystified as to what he was

referencing. Then once in front of the Planning and Zoning Board they based their decision on two principal items. One was that the high-tech industrial corridor does not allow M-2A uses, only M-1A uses. That isn't true. The second was that heavy industrial are not permitted in Colonial Center Heathrow. That isn't true. He stated that the City's code permits both M-1A and M-2A uses there. It doesn't require separation. The City can put heavy industrial, M-2A use on this property today because the codes say they can. The staff keeps saying it doesn't matter, but they have admitted that both of these points were wrong and concluded that it doesn't matter. They are wrong, it does matter. These continued false assertions and statements deny them what is called procedural due process. Under all of the circumstances staff comments do not constitute confidence of substantial evidence when they are wrong. It wasn't as if they sat back and hoped that staff would figure it out. They called, wrote letters, and they were ignored. Staff has now raised a whole host of new issues and they are complete with the same kind of incorrect assertions. What the codes really say is that the elected officials have power to make a determination of whether another use is similar and compatible. Right now, the office market is in shambles. This is a great project, but it is losing office square footage substantially each month. This isn't just Lake Mary; this is the United States. There are basically about a hundred uses and some of them are M-2A. They are permitted and have been for more than twenty years. One of the specifically permitted uses is business services. This is just an example. Business services is document storage, document storage provides for secure airconditioned environment for individuals and business staff who need off site storage or items not used on a daily basis. This is exactly what self-storage is. A secure airconditioned environment for individuals and businesses for offsite storage of items not used on a daily basis. This is one example but there are others. Compatibility is not defined by law, when a lawyer or court has to deal with an undefined word it goes to a common resource like Websters Dictionary. The definition of compatibility that he's seen most used is something capable of living in harmony with something else. Looking at the compatibility in this case it should be obvious that there is a physical compatibility. There is also use compatibility because there are other uses that are permitted in your existing code that are similar in character. Similar and compatible is a term that can be used to allow this to be approved. In terms of use compatibility there is a statement in the staff report that says that self-storage is not a common use in high end office parks. He stated that is a false statement. Maitland Center has some kind of flex space similar in nature. They are all over the country, this is a part of the business fabric of these kinds of projects. There isn't one on every corner. Self-storage in the 1980s was metal buildings with roll up doors. That isn't what this is, this is an office looking building. You couldn't tell this wasn't an office unless you went inside. It provides ancillary support for both business and residents of Colonial Center and surrounding area.

Mayor Mealor asked Mr. Kantor to identify the court reporter with him. Mr. Kantor introduced Mary Louise Dobson.

Mr. Javiar Omana came forward again to discuss a score card that they have put together to help navigate some of these complex issues relative to the framework that

was established back thirty-five years ago. The project can be approved because mixed use is allowable in the PD. Industrial uses as defined under M-1A and M-2A are permitted within the PUD. The PUD is undefined when it relates to permitting self-storage.

Mayor Mealor asked if self-storage is listed as an approved use in the DRI.

Mr. Javiar Omana stated that it does not go into specific uses.

Mayor Mealor asked if self-storage is listed separately in M-2A.

Mr. Javiar Omana stated he believes it is.

Mayor Mealor stated the issue is we have permitted uses and self-storage is not included in the permitted use. It is sited elsewhere in a M-2A use.

Mr. Kantor stated that the DRI deals with broad categories of uses. The PUD deals with zoning. The CCDD has hundreds of uses, it is neither permitted nor prohibited. There is a category that says other uses deemed by this Commission as being similar and compatible. He stated that the point he made is, because you are in the zoning process that decision has to be made upon competence of circumstantial evidence.

Mr. Javiar Omana stated that they filed for a PUD rezone to include self-storage as a use in the PUD itself. The PUD does permit warehousing uses. Flagship is proposing covenants and restrictions. They believe the use is compatible based on the architectural renderings. Self-storage is a business service. The use is compatible with other CCH uses and is complimentary to the fabric that has been established in the project itself and it does provide ancillary support to the established uses within the DRI itself.

Mr. Kantor stated that his client has a vision. They want to make this another part of the City's crown jewel. They've been good residents. They've done mixed uses before with retail and restaurants along with self-storage. This facility has been designed to be compatible with both the intent, the vision, and the beauty of what has happened here in Lake Mary. He asked that Commission approve the project.

Commissioner Smith asked for explanation of the business model. To him self-storage is independent and that goes against what the HIP-TI calls for and the original DRI application calls for reducing automobile and promoting pedestrian trails. He is trying to understand where self-storage falls in HIP-TI original vision for the application.

Mr. Kantor stated there is a hundred different uses and as a total development all of those uses combined to achieve that goal. The traffic analysis, all of that was done in contemplation of having different kinds of accessibility. This isn't a town center project for example. Self-storage isn't an appropriate use for a town center project. But this is

an office project and it's an ancillary use. You can walk to it if you want to. People drive to it. It's like offices, people drive to their offices. It's no different than anything else.

Commissioner York asked Ms. Rosato if Flagship will actively manage the storage facility.

Ms. Rosato stated that as far as the ownership they will be, but they partner with Extra Space Storage to handle the leases and things like that. They are the largest self-storage provider in the nation. That is their expertise as far as managing.

Commissioner York asked if then Flagship would have an arm's length relationship with the day-to-day management of the facility.

Ms. Rosato stated that they are very involved. If there was a leak in the roof, they'd be the one to address it. They have regular calls with the facility management as far as any concerns from customer standpoint.

Commissioner York asked if Flagship would restrict what could or could not be stored in an individual storage unit.

Ms. Rosato stated that there are standard restrictions, typical to the industry that is usually harmonious with zoning restrictions. You can't store hazardous materials, run a business out of a unit, live in a unit. They have standard lists that comply.

Commissioner York asked if they had ever had to set restrictions above and beyond what is required by law or if they default to local law.

Ms. Rosato stated that they have not, and they do make sure their policies are conforming and up to date if they are seeing a spike in something such as a pot plant being stored. That is something they would discuss further. If there was a need.

Commissioner York asked if someone gets these documents when they rent a unit.

Ms. Rosato stated that they do, and they have to sign off on it.

Commissioner York asked if the forms come from Flagship.

Ms. Rosato stated that it comes from Extra Space.

Commissioner York asked if they were basically a vender they would hire.

Ms. Rosato stated that he is right, sometimes they partner with them directly in the ownership.

Commissioner York asked if they ever wanted to set more restrictions would they be able to do that or would they need to consult Extra Space.

Ms. Rosato stated that she believes they could but have not done that in the past. It would require extra conversation with the executives from Extra Space. If there was a concern about something she is sure they would not hesitate to make sure they could come to some sort of agreement.

Commissioner York asked Ms. Rosato if Flagship would restrict the use of the units only to business owners.

Ms. Rosato stated that they would not. Primarily from a demand standpoint. There is demand in Colonial Center Heathrow to the businesses within but also to the surrounding residential communities.

Commissioner York asked if they were open to the public.

Ms. Rosato stated that they are.

Commissioner York asked if he as a residential homeowner wanted to rent a unit, he would be able to do that even if it wasn't for business purposes.

Ms. Rosato stated that he is correct.

Commissioner York asked Mr. Kantor if he could explain the similar compatible language that he referenced earlier.

Mr. Kantor stated it was specifically on three pages in the PUD documents. It deals with a lot of different things. They've only focused on use. They have uses that relate to office, uses that relate to retail, uses that relate to other classifications. In the original PUD in each of those three categories which are broad categories it says you can do this, but you can't do that. You can also do things that are similar and compatible. That applies not just in office but in other areas. It was obviously put in because someone said that you can't predict the future and it gave government the flexibility to see what happens.

Commissioner York asked if he agrees that it has to be both and if the determination as to whether or not it is similar or not is subject to determination by Commission.

Mr. Kantor stated that is correct and he would not totally agree with that. Your decisions have to be based on competent substantial evidence that has been brought before you. It is not just whatever, it is bound in the construct of the law.

Commissioner York asked if the evidence would be the documents and testimony in total. He asked Mr. Kantor if he agrees that they would basically be using the reasonableness standard.

Mr. Kantor agreed and then stated he doesn't want to be argumentative but if you have legislative decisions which gives them broad discretion which is a comprehensive plan. In that yes, they do have that level of discretion. In zoning no, they do not.

Commissioner York asked if in Mr. Kantor's opinion that self-storage is similar to other uses in the DRI that they should approve the project.

Mr. Kantor stated that is his opinion and it is the evidence they have presented. His opinion as to those issues is worthless. The only evidence that it should be based upon is the competent substantial evidence produced by testimony of people who are deemed experts under the law.

Commissioner York asked Mr. Kantor if he agrees that Mrs. Colbert has comparable credentials to Mr. Omana.

Mr. Kantor stated he doesn't have any idea if Javier even went to school. He did see Mrs. Colbert's resume and he noted that she does have the credentials.

Commissioner York asked Mr. Kantor if in his opinion self-storage is similar to an office.

Mr. Kantor stated that he doesn't, but it is similar to other uses in the DRI.

Commissioner York asked Mr. Kantor if there are any other uses in the DRI that he would say that self-storage is similar to other than business services.

Mr. Kantor stated that he would have to go back and look. There are about a hundred of them.

Commissioner York stated he asked because Mr. Omana stated earlier that the services rendered won't be just to businesses but to the public at large. He asked if self-storage is still similar to business services if the facility is catering to non-businesses as well.

Mr. Kantor stated yes because there are people in the offices. It's part of what makes a community. You provide for the community. It's not just the boundaries it is a service. Someone could even store office furniture in it.

Commissioner York asked Mr. Kantor if he thinks reasonable minds could disagree whether or not this self-storage facility qualifies as business services.

Mr. Kantor stated he was afraid of that kind of question. Yes, reasonable minds can differ, but that is why he emphasized that this process has been poisoned. This process is creating a procedural due process claim that he does not want to pursue. If he had to do that the damages create a mess for all of us. How can you say reasonable minds can differ when, from his prospective, those minds have been burdened with a bunch of things that aren't valid. This could be approved, and the staff could work out conditions that make it work within, that is generally how these things go. If none of the things he has identified tonight had happened and he wouldn't have felt compelled to send the letter. He could safely say that, but he doesn't think that he can honestly say that as an attorney based upon the evidence he presented.

Commissioner York stated that he asked because of the boxes on the cheat sheet as to whether or not this is a project that is suitable to help them navigate this and there was a box checked undecided box. He was going off of the argument how Mr. Kantor and his client structured it. Regardless of any conversations or representations that have happened. He wasn't there during the planning stage.

Mr. Kantor stated that the testimony received tonight is not fair, accurate, or meets due process.

Commissioner York asked if regarding the similar and compatible standard that's a use and not aesthetics.

Mr. Kantor stated he thinks that its all of it. You have to look at the visual component as well as the uses.

Commissioner York asked if Mr. Kantor agrees that the use component is important.

Mr. Kantor stated that they are both important.

Deputy Mayor Miller asked how they plan to regulate what is stored in the units.

Ms. Rosato stated that she doesn't have a definitive answer but, in her experience, she's not been in the weeds that much with the actual day to day operations of the facility as far as inspections. But they do have policies and procedures in place to ensure that there are not such restricted items stored at the facility. She would need to get with Extra Space.

Deputy Mayor Miller stated he is taking it as it's not really regulated or a regulated process. People can store what they choose to store if they pay the fee. He asked if there are regular inspections and stated he would like to know what the procedure is.

Ms. Rosato stated that there are inspections but as far as set and on schedule she would need to confirm with Extra Space.

Mr. Kantor stated he gave Mrs. Reischmann a book of documents to be entered into the record. The documents are what they've been discussing.

Commissioner Smith asked how Flagship classifies self-storage. If they see it as commercial, industrial, or office.

Mr. Kantor stated that classification is determined by local government regulations. The City has chosen to make self-storage a heavy industrial use. Other jurisdictions make it a heavy commercial use or retail use.

Commissioner Smith asked Mr. Kantor if he would say that they weren't an industrial use, or light industrial, heavy industrial. You stated you've done thousands of these.

Mr. Kantor stated that our code identifies it as a M-2A heavy industrial use. In the DRI and PUD it has both M-1A and M-2A uses. It seems that someone said some of these are in M-1A and M-2A, but we want them in the project so we're going to make them be in the project.

Mayor Mealor asked Mr. Kantor if he feels as though he has been provided due process.

Mr. Kantor stated that can only be determined with the result. This hearing isn't over. All of the words haven't been said. He is pleased with the nature and the flexibility the City has given them with their presentation. He thinks this has been done in a professional manor.

Mayor Mealor stated that before the public hearing section is opened, he appreciates the manor that the applicant and representatives have presented the information. He asked Mrs. Colbert if there was anything else she would like to add.

Commissioner Smith asked Mrs. Colbert if her presentation, information she's provided tonight, and the staff reporting is from the third amended and restated DO.

Mrs. Colbert stated he was correct.

Commissioner Smith asked if self-storage is the same as business storage.

Mrs. Colbert stated in her opinion as a planner it is not. Self-storage is its own use unto itself. Business storage has a specific end user where self-storage has multiple types of end users.

Commissioner Smith asked her to explain her conclusion that the PUD uses listed don't fit under the M-2A.

Mrs. Colbert stated that she has the slides up on the overhead of the uses listed in the CCDD document. The one up currently is the office and as described the last item listed is other similar and compatible uses. Things included are manufacturing, assembly, wholesale, distribution, and offices for computer and office equipment, electronic equipment, optical equipment, research development testing, training, and maintenance for computer services, health and sports, etc. There are uses listed that fall under the M-2A zoning district including hospitals and medical clinics. That would be one of the examples. On the next slide she has the support retail and commercial uses listed. It lists specific support retail and commercial uses that are permitted. In support of the owners, employees, and visitors of the HIBC. Those are travel agencies, banks, financial services, restaurants, coffee shops, daycare, etc. Including the other similar and compatible uses subject to this commission.

Mrs. Reischmann stated this decision that you are required to make, it's been said multiple times that it is a quasi-judicial decision. You are all very familiar with that and the fact that you can't make a decision based on what you think is the best thing or what you would like to see. It has to be constrained by the comprehensive plan and the land development code. Sometimes we don't like what the codes say and sometimes we don't like what the comprehensive plan says, and we think maybe it hasn't changed with the times. But that is what we have, and we have to go by those standards. If the only standard that we have to look at is whether self-storage is other similar and compatible use this would be an easier hearing and we'd be in and out of here very quickly. She thinks that they understand from listening to the staff report and listening to Mr. Omana it is more than just that. As Mr. Kantor indicated this is a battle of the experts so to speak. We're talking about two very qualified and experienced planners. It is up to Commission to sift through their testimony, staff report, and the power points to determine what would sway their opinion. We have to look in our framework and the law demands that whenever we look at our framework the very first thing is our comprehensive plan. That is our Bible, our Constitution, our touch stone. This particular comprehensive plan text really draws in the DRI. It's all kind of mixed up together so you have to pay close attention. She doesn't know that they heard that much about the HIP-TI comprehensive plan designation from Mr. Omana. They heard a great deal about it from Mrs. Colbert. In that is your first question because before you get even into any plan development code and certainly before you get to the PUD. You can come in and say this is similar to a business service we can just head out. There is more to it than that. You aren't required to follow staff testimony if you think they made erroneous comments then that is certainly your prerogative to disregard it. You've heard what the applicant thinks, you've heard all of the evidence. There is nothing that they think is incorrect that they haven't had an opportunity to bring forward. The whole idea of a well being poisoned is a bit of a misnomer because whatever poison may be in there, they can show you, and you can distinguish between what Mrs. Colbert and Mr. Omana indicate. Take these accusations into account and certainly consider the Planning and Zoning recommendation and look at the meeting minutes to see how Mrs. Colbert the first time around as a house keeping matter wasn't 100 % sure how the overlay district extended onto this property because of the fact that it was annexed later. You can take

that for what it's worth and were they looking instead at the actual comprehensive plan designation for this property which is HIP-TI. The overlay discussion in our comprehensive plan is about seven lines long. The HIP-TI instead is extensive covering two and a half pages of text. The applicant is not seeking to amend that text in any way. They are coming in saying the regulatory table is set. All we have to do is show you that this is another similar and compatible use. Weigh that against what Mrs. Colbert has told you. Regarding due process she thinks the City Commission has provided ample opportunity to speak. At the Planning and Zoning Board meeting Mr. Kantor indicated he received due process. They aren't seeking any amendments to the PUD or the DRI beyond just adding in this use. That is an important point too. Mrs. Colbert's staff report mentioned that there is no objection to the other conversions that they are requesting. Understand that with a PUD zoning, we are used to the fact that it is a negotiated zoning, and it does provide a great deal of flexibility. Nothing has been amended that has added a use of this nature, which is a different type of amendment. PUD permits flexibility. The PUD amendment has to be measured against our comprehensive plan and against our rezoning standards. It's not as flexible when you're seeking a change of use. On the slide with the PUD amendment, they are discounting the fact that the category at the top is office. They're stating it doesn't matter what category it is. Mr. Kantor stated he didn't know the categories. But those categories give you information which is the primary use of office. These are all for the offices and the next page the category is support, retail, commercial. That needs to be looked at as well when determining whether you believe that self-storage even fits under one of these categories. If you find that it fits and is consistent with the comprehensive plan and it is in compliance with the rezoning code, then you say, is it an office, is it a support retail/commercial. If you say it is an office, then you can look at other similar compatible. This is not quite as simple as the applicant is making it to be. Despite the fact that you've heard valid testimony by a very experienced planner who is saying that self-storage is similar and compatible use. We have to jump through some hoops to get to that. We're in a quasi-judicial, we're not able to just decide what we think would be a great idea for this project.

Both items were then opened for public hearing. Nobody came forward and the public hearing section was closed.

Commissioner Smith made a motion to deny 2023-MISC-01, A request to consider the Seventh Amendment to the Third Amended and Restated Development Order (DO) for Colonial Center Heathrow (Lake Mary). As the CCH DRI is not consistent with policy 1.4 and 1.1 of the Lake Mary Comprehensive Plan, it is not consistent with section 154.66 of the Land Development Code, not consistent with the DRI application for development approval dated September 1987 based off of the staff report and evidence provided tonight. As policy 1.4 HIPTI land use designation is a wide range of permitted uses which include offices, technology, research and development, health related uses, sports complexes, manufacturing, wholesale/distribution, consistent with high tech industrial corridor protection area overlay retail lodging residential or mixed use developments, storage

including materials/storage/mini warehouses and personal storage facilities is not listed as a permitted use within the HIP-TI, it is not high tech and it is considered heavy industrial under the City code. In terms of policy 1.1 self-storage is only permitted as of right on lands within an industrial land use designation of properties within M2A zoning. Section 154.66 M2A zoning is compatible within industrial future land use designation such as properties not designated as industrial designation of HIPTI. DRI application development should contain office, retail, and wholesale uses. Secondary uses are proposed to be allowed. However, light industrial per section 154.66 is M1A uses. The vision was to encourage site travel by means other than private automobile. As well as all of the other codes and statutes referenced in the staff report. Commissioner York seconded the motion and the motion carried 4 – 0 by roll-call vote. Commissioner Smith, Yes; Commissioner York, Yes; Deputy Mayor Miller, Yes; Mayor Meador, Yes.

Commissioner Smith made a motion to deny 2023-RZ-03, A request to consider the Fifth Amendment to the Fourth Amended and Restated Developer's Agreement for the Colonial Center Heathrow Planned United Development, to allow a 108,000 sq. ft. self-storage/industrial facility within a mixed-use development on a portion of Tract P located on the east side of Business Center Dr. and south of Business Park Ln. For the reasons that self-storage is not compatible with the CCH PUD, the self-storage is not a high-tech use. It is not pedestrian oriented, and the mass is not compatible with the adjacent development which consists of smaller buildings. It would include all of those reasons listed in the DRI and the prior motion as well as not constituting in other similar and compatible use under the PUD, as well as the staff report. Deputy Mayor Miller seconded the motion and the motion carried 4 – 0 by roll-call vote. Commissioner Smith, Yes; Commissioner York, Yes; Deputy Mayor Miller, Yes; Mayor Meador, Yes.

C. Addendum to Agreement for Police Dispatch Services with Seminole County Sheriff's Office for FY '24 (Public Hearing) (Mike Biles, Police Chief)

Mike Biles, Police Chief, discussed the information as presented in the Staff report, which was included in the agenda packet for review.

He requested Commission authorize the approval and to execute addendum to the agreement with Seminole County Sheriff's Office for Law Enforcement Dispatching Services.

Commissioner Smith stated he wanted to thank the School Resource Officers. They are wonderful with the kids at the schools.

Deputy Mayor Miller made a motion to authorize the approval and to execute addendum to the agreement with Seminole County Sheriff's Office for Law

Enforcement Dispatching Services. Commissioner York seconded the motion, and the motion was approved unanimously.

D. School Resource Officer Agreement with Seminole County School Board (Public Hearing) (Mike Biles, Police Chief)

Chief Biles requested Commission approve the execution of the 2023-2024 School Resource Officer Agreement with the Seminole County School Board.

Commissioner York made a motion to authorize Mr. Smith to execute the 2023-2024 School Resource Officer Agreement with the Seminole County School Board. Deputy Mayor Miller seconded the motion, and the motion was approved unanimously.

E. Agreement with United Cerebral Palsy and Seminole County Sheriff's Office for School Security Officer (Public Hearing) (Mike Biles, Police Chief)

Chief Biles requested Commission approve the execution of the 2023-2024 School Resource Officer Agreement with LMPD, SCSO and UCP Charter School.

Commissioner York made a motion to authorize Mr. Smith to execute the 2023-2024 School Resource Officer Agreement with LMPD, SCSO and UCP Charter School. Deputy Mayor Miller seconded the motion, and the motion was approved unanimously.

10. Other Items for Commission Action

11. City Manager's Report

A. Items for Approval

a. Vehicle Replacement and Additional Purchase

Mr. Smith discussed the information as presented in the Staff report, which was included in the agenda packet for review.

He requested Commission authorize the purchase of two vehicles and appurtenances from Bartow Ford, via Charlotte County Contract #2021000541, in the amount of \$122,687.42 and to also declare vehicle #2304 surplus and authorize himself to dispose of same.

Commissioner Smith made a motion to authorize Mr. Smith to purchase two vehicles and appurtenances from Bartow Ford, via Charlotte County Contract #2021000541, in the amount of \$122,687.42 and to also declare vehicle #2304 surplus. Deputy Mayor Miller seconded the motion, and the motion was approved unanimously.

b. Change Order for Core and Main

Mr. Smith discussed the information as presented in the Staff report, which was included in the agenda packet for review.

He requested Commission approve a change order to the purchase order for Core and Main LP to increase the total amount for P.O. #23-0070 to \$66,000 and authorize himself to execute same.

Deputy Mayor Miller made a motion to authorize Mr. Smith to approve a change order to the purchase order for Core and Main LP to increase the total amount for P.O. #23-0070 to \$66,000. Commissioner York seconded the motion, and the motion was approved unanimously.

B. Items for Information

a. Monthly Finance Report

Mr. Smith stated everything is trending accordingly.

C. Announcements

12. Mayor and Commissioners Report

A. Deputy Mayor Miller

He commended his fellow Commissioners and the Mayor for the meeting this evening. It is easy to sit on the dais and agree nicely with what everyone says. Sometimes when there is an issue it is really hard to do what they do up there.

B. Commissioner York

He said that he met with Mr. Smith, Mr. Dove, and another member of the West Crystal Lake Property Owners Associations. They reprised them of the progress they've been making with Seminole County, and they are hoping to get some resolution. He also commended Scott Rankin, Water Plant Operator, for his patience at the forum the other night. He represented the City very well.

C. Commissioner Smith

He attended the Florida League of Cities meeting last week. It was a great conference where he could network with other cities. He thanked Chief Biles for bringing the dogs in earlier. They will be a great asset. Two weeks ago, he had the opportunity to attend the Lake Mary Birthday Celebration at the museum with Mayor Mealor and Mr. Smith. It

was kind of timely because the third mayor was there. The way the City came about was through planning and strategic initiatives that they had as well as the people after them had and we're protecting what people before us did and hopefully whoever comes after us will protect it as well.

13. City Attorney's Report

No report.

14. Adjournment

There being no further business, the meeting adjourned at 9:43 P.M.